

JPA File No.: 07-086I  
AG Contract No.: P001-2007-004033  
Project No.: TEA SVS-0-(006)A  
Project: Multi-Use Pathway  
Section: Buffalo Soldier Trail Cherokee  
to State Route 92  
**TRACS No.: SL 55201C**  
**Budget Source Item No.: 75308**

## INTERGOVERNMENTAL AGREEMENT


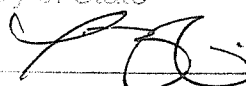
**BETWEEN  
THE STATE OF ARIZONA  
AND  
CITY OF SIERRA VISTA**

**THIS AGREEMENT** is entered into this date February 15, 2008, pursuant to the Arizona Revised Statutes § 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF SIERRA VISTA, acting by and through its MAYOR and CITY COUNCIL (the "City"). The State and the City are collectively referred to as "Parties".

### I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.
2. The City is empowered by Arizona Revised Statutes § 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.
3. Congress has authorized appropriations for, but not limited to the twelve eligible categories of Transportation Enhancement activities.
4. This Agreement pertains to the design and construct of a multi-use pathway, plus related landscaping and drainage improvements, all to be maintained by the City. The pathway involves a 10-foot wide, asphalt multi-use pathway approximately 5300 feet long, and constructed of asphalt along the north side of Buffalo Soldier Trail in Sierra Vista between Cherokee Avenue and State Route 92. The State approves the City to self-administer the above design and construction, collectively hereinafter referred to as the "Project".
5. The survey of the Project has been completed and the plans, estimates and specifications will be prepared and as required, submitted to the State and Federal Highway Administration (FHWA) for its approval.
6. The City, in order to obtain Federal funds for the construction of the Project, is willing to provide City funds to match Federal funds in the ratio required or as finally fixed and determined by the City and FHWA, including actual construction engineering (CE) and contingency costs.

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42. 29685  
Filed with the Secretary of State  
Filed: 2-15-08  
  
Secretary of State  


7. The interest of the State for this Project is in the acquisition of Federal Funds for the use and benefit of the City and is the designated agent for the City. Funds expended for the Project are authorized by reason of Federal Law and regulations.

**Total Federal Aid (capped)** \$ 498,385.00

**Design SL552 02D:**

Federal Aid Funds @ 94.3% \$ 51,865.00  
Matching City Funds @ 5.7% \$ 3,135.00

**Construction SL552 01C:**

Federal Aid Funds @ 94.3% \$ 446,520.00  
Matching City Funds @ 5.7% \$ 26,990.00  
Total Estimated 100% of City Funds \$ 30,125.00

Estimated Cost of the Project\* \$ 528,510.00

\*(Includes 15% CE and 5% contingency).

**THEREFORE**, in consideration of the mutual Agreements expressed herein, it is agreed as follows:

**II. SCOPE OF WORK**

1. The State shall:

a. Submit a program to the Federal Highway Administration (FHWA) containing the above-mentioned Project, with the recommendation that it be approved for construction.

b. Approve the Project if such project construction funds are available by FHWA and request the maximum authorized Federal funds for the Project including construction engineering and administration costs.

c. Upon authorization, notify the City that they may proceed to advertise for, receive and open bids, enter into contracts(s) with a firm(s) to whom the award is made for the construction of the Project.

d. After bid opening and award of the construction contract by the City, make progress payments to the City for the incurred, eligible costs of the Project, within 30 days after receipt and approval of an invoice. The maximum payments to the City shall not exceed the combined capped Federal Aid Funds for Design and Construction of **\$498,385.00**. The estimated cost of the project is currently at **\$528,510.00** which includes preliminary engineering cost. The City shall be responsible for the difference between Federal Aid capped and City matched estimated funds of **\$30,125.00**.

e. Not be obligated to maintain said Project, should the City fail to budget or provide for proper and perpetual maintenance as set forth in this Agreement.

2. The City shall:

a. Upon execution of this Agreement, designate the State as authorized agent for the City.

b. Advertise for, receive and open bids, enter into contracts(s) with a firm(s) to whom the award is made for the construction of the Project. The Project shall be performed, completed, inspected, accepted and paid for in accordance with Arizona Procurement Procedures.

c. Provide personnel to administer and supervise construction. All construction project change orders are to be copied to the State.

d. Be obligated to incur any expenditure, should unforeseen conditions or circumstances increase the cost of said work required by a change in the extent of the Project scope. Such changes in Project scope will require the prior approval of the State

e. Complete the Project in accordance with approved plans and specifications and the requirements of the relevant State and Federal Statutes, Rules or Regulations. In the event the City fails to comply with the plans, specifications or any relevant State or Federal Statutes, Rules or Regulations, the City shall hold the State harmless from any claims or costs incurred by the State as a result of the City's actions.

f. Should costs exceed the maximum Federal funds available, or unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or scope of the work called for in this Agreement, it is understood and agreed that the City will be responsible for any overage.

g. Invoice the State for Federal funds upon incurring incurred, eligible design and construction costs, not to exceed the combined capped amount of **\$498,385.00** in Federal Aid. The City shall provide, along with the final billing, a letter from its project manager or other responsible engineering official, that the work on the project is complete and has been considered acceptable, and the federal project is ready to be closed.

h. Be responsible for the ongoing maintenance and emergency repairs of said Project. Maintenance shall include but not be limited to keeping the pathway surface and surrounding areas free of all debris and doing any repairs that might be necessary to keep the pathway, safety railing and any retaining wall compliant with the Americans with Disabilities Act Accessibility Guidelines.

i. Upon completion of construction, the City shall provide for, at its own cost, perpetual and proper maintenance of all landscape and drainage improvements. It shall also be responsible for the ongoing maintenance of all landscaping in accordance with accepted horticultural practices.

j. Be responsible for the electrical power and water necessary to maintain the landscaping and irrigation system, including all testing, adjusting, repairing and operation of the irrigation system and shall furnish all power to operate the system.

k. Consent to any inspections performed by the State, provide records or audit any books of the City in order for the State to assure monies on the Project have been spent and the Project completed in accordance with the plans and specifications, statutes, rules and regulations of the State and Federal Government.

l. Conduct all maintenance work in a manner to minimize traffic congestion and interference with through-traffic. All traffic control will meet the requirements of the most recent Arizona Department of Transportation's "Uniform Traffic Control Manual".

m. Upon Project completion, provide three (3) copies of as-built plans, of any improvements constructed on State right-of-way, to the ADOT Safford District Development Engineer, as per III. Miscellaneous Provisions' paragraph #8 below.

### **III. MISCELLANEOUS PROVISIONS**

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of said project and related deposits or reimbursement, except any provisions for maintenance shall be perpetual, unless assumed by another competent entity. Further, this Agreement may be cancelled at any time prior to the award of the project construction contract, upon thirty days (30) written notice to the other party. It is understood and agreed that, in the event the City terminates this Agreement, the State shall in no way be obligated to maintain said Project.

2. The State assumes no financial obligation or liability under this Agreement, or for any resulting construction Project. The City, in regard to the City's relationship with the State only, assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims. It is understood and agreed that the State's participation is confined solely to securing federal aid and related matters; that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof shall be solely the liability of the City and that to the extent permitted by law, the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all costs and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or non performance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees, or its independent contractors, the City, any of its agents, officers and employees, or its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation and attorneys' fees.

3. The cost of construction and construction engineering work covered by this Agreement is to be borne by FHWA and the City, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this Agreement. Therefore, the City agrees to furnish and provide the difference between the total cost of the work provided for in this Agreement and the amount of Federal Aid received.

4. This Agreement shall be filed with the Arizona Secretary of State and shall not become effective until the date of said filing.

5. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

6. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.

7. This Agreement is subject to all applicable provisions of the Americans with Disability Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable Federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

8. Non-Availability of Funds: Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments as a result of termination under this paragraph.

9. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

10. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail, addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 S. 17<sup>th</sup> Avenue, Mail Drop 616E  
Phoenix, Arizona 85007  
(602) 712-7525  
(602) 712-7424 Fax

City of Sierra Vista  
Attn: City Manager  
1011 N. Coronado Drive  
Sierra Vista, AZ 85635  
(520) 458-3311  
(520) 458-0584

ADOT Safford District Development Engineer  
2082 E. Highway 70  
Safford, AZ 85546  
(928) 432-4921

11. In accordance with Arizona Revised Statutes § 11-952 (D) attached hereto and incorporated herein is the written determination of each party's legal counsel and that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

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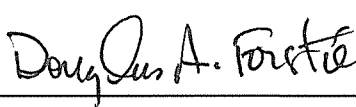
**IN WITNESS WHEREOF**, the parties have executed this Agreement the day and year first above written.

**CITY OF SIERRA VISTA**

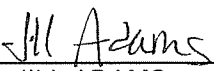
**STATE OF ARIZONA**

Department of Transportation

By   
BOB STRAIN  
Mayor

By   
DOUGLAS A. FORSTIE, P.E.  
Deputy State Engineer Operations

ATTEST:

By   
JILL ADAMS  
City Clerk

RESOLUTION 2008-017

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, COCHISE COUNTY, ARIZONA; AUTHORIZING THE CITY TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION TO CONSTRUCT THE BUFFALO SOLIDER TRAIL MULTI-USE PATH BETWEEN CHEROKEE AVENUE AND STATE ROUTE 92; AND AUTHORIZING AND DIRECTING THE CITY MANAGER, CITY CLERK, CITY ATTORNEY OR THEIR DULY AUTHORIZED OFFICERS AND AGENTS TO TAKE ALL STEPS NECESSARY TO CARRY OUT THE PURPOSES AND INTENT OF THIS RESOLUTION.

WHEREAS, it is the settled policy of the City Council to authorize the City staff to seek, make application for, and accept any Federal and State funding assistance for improvements to our community that are beyond the funding capacity of City revenues, when it is determined by the City Council to be in the best interests of the City; and

WHEREAS, the City and State share responsibilities of providing streets and public roadways, which are safe and meet the transportation needs of the general public; and

WHEREAS, traffic volumes on Buffalo Solider Trail makes it necessary to construct this multi-use path in order to improve safety by separating pedestrians and bicyclists from vehicular traffic; and

WHEREAS, it is in the mutual interest and benefit of the Arizona Department of Transportation (ADOT) and the City to construct a multi-use path along Buffalo Solider Trail; and

WHEREAS, both parties desire to enter into an Intergovernmental Agreement that will allow ADOT to share the project costs of design and construction of a multiuse path along Buffalo Solider Trail, with a total estimated cost of Five Hundred Twenty Eight Thousand Five Hundred and Ten Dollars (\$528,510.00); of which Four Hundred Ninety-Eight Thousand Three Hundred and Eight-Five dollars (\$498,385.00) will be funded by ADOT; and Thirty Thousand One Hundred Twenty-Five dollars (\$30,125.00) will be funded by the City of Sierra Vista.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, ARIZONA, AS FOLLOWS;

SECTION 1

That the settled policy of the City Council of seeking Federal and State funding assistance, most recently affirmed by Resolution 2008-007, and hereby is, reaffirmed.

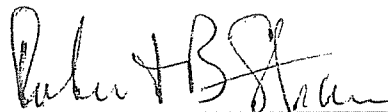
SECTION 2

That the City Council approves entering into an Intergovernmental Agreement with ADOT to share the project costs of designing and constructing a multi-use path along Buffalo Soldier Trail, which has a total estimated combined cost of \$498,385.00 from ADOT, and \$30,125.00 from the City.

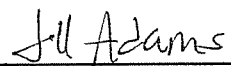
SECTION 3

That the City Manager, City Clerk, City Attorney or their duly authorized officers and agents are hereby authorized and directed to take all steps necessary to carry out the purposes and intent of this resolution,

PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, ARIZONA THIS 24th DAY OF JANUARY 2008.

  
\_\_\_\_\_  
ROBERT B. STRAIN  
Mayor

ATTEST:

  
\_\_\_\_\_  
JILL ADAMS  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
STUART L. FAUVER  
City Attorney

PREPARED BY:  
D. MICHAEL CLAWSON  
Purchasing Manager

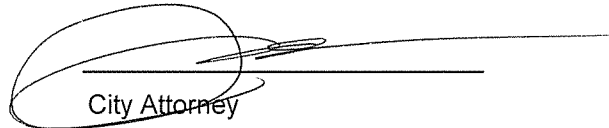
RESOLUTION 2008-017  
PAGE TWO OF TWO

**ATTORNEY APPROVAL FORM FOR THE CITY OF SIERRA VISTA**

I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the CITY OF SIERRA VISTA, an Agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona.

No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

  
\_\_\_\_\_  
City Attorney



<p><b>TERRY GODDARD</b> Attorney General</p>	<div data-bbox="740 81 931 268" data-label="Image"></div> <p><b>OFFICE OF THE ATTORNEY GENERAL</b> STATE OF ARIZONA</p>	<p>CIVIL DIVISION TRANSPORTATION SECTION Writer's Direct Line: 602.542.8855 Facsimile: 602.542.3646 E-mail: Susan.Davis@azag.gov</p>
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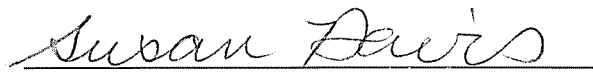
**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. P0012007004033 (**JPA 07-086-I**), an Agreement between public agencies, i.e., The State of Arizona and City of Sierra Vista, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: February 7, 2008

TERRY GODDARD  
Attorney General

  
SUSAN E. DAVIS  
Assistant Attorney General  
Transportation Section

JA:mjf:143076  
Attachment